

# House Daily Reader

**Thursday, January 21, 1999**

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# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

159C0269

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB1015** - 1/20/99

Introduced by: The Committee on Local Government at the request of the State Board of Elections

1 FOR AN ACT ENTITLED, An Act to revise certain election procedures for the formation of  
2 certain special districts and the election of directors, managers, or trustees.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 6-16 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 A landowner for the purposes of chapter 6-16 means any person who owns property, as  
7 defined pursuant to § 10-4-2 or 10-9-1, within the special district and is listed as an owner of the  
8 property by the register of deeds. A partnership, association, cooperative, trust, limited liability  
9 company, or corporation may by resolution appoint one person to vote in a special district  
10 election on behalf of the partnership, association, cooperative, trust, limited liability company,  
11 or corporation. A person who has purchased property under a contract for deed which is of  
12 record in the office of the register of deeds in the county where the real property is situated is  
13 entitled to vote in the special district election and the seller of the property under a recorded  
14 contract for deed may not vote. No person, partnership, association, cooperative, trust, limited  
15 liability company, or corporation may vote more than once in any special district election.

16 Section 2. That chapter 6-16 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Sections 3 to 6, inclusive, of this Act apply to elections of the board of directors, managers,  
3 or trustees for certain special districts. The special districts covered are county road, ambulance,  
4 rural fire protection, watershed, and water project districts.

5 Section 3. That chapter 6-16 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 Each special district shall conduct an election during the annual meeting to replace any  
8 director, manager, or trustee whose term has expired. The district clerk or secretary is designated  
9 as the person in charge of the election and shall conduct the election on behalf of the district. The  
10 notice of election shall be published pursuant to the time frames established in § 6-16-4.  
11 However, the notice for a water project district shall include information on any project reserve  
12 fund established by the water project district pursuant to § 46A-18-57.1.

13 Section 4. That chapter 6-16 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 The district president or chair shall call the landowners present at the annual meeting to  
16 order. The person in charge of the election shall select and appoint three landowners of the  
17 district to serve as election deputies, who shall be duly sworn and shall conduct the district's  
18 election. The voters in attendance at the annual meeting shall nominate each person to be elected.

19 Section 5. That chapter 6-16 be amended by adding thereto a NEW SECTION to read as  
20 follows:

21 An election deputy shall keep a poll list by entering the name of each person who votes. A  
22 single ballot shall be distributed to each voter upon which votes may be cast for each office to  
23 be elected. Each voter shall fold the ballot to conceal the contents and deliver the ballot to an  
24 election deputy. The election deputy shall deposit the ballot in a box provided for that purpose.

25 Section 6. That chapter 6-16 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 At the close of the election, the election deputies shall publicly count the votes. After the  
3 counting is commenced, the counting shall continue without adjournment or interruption until  
4 completed. The count shall be conducted according to the procedures for the tabulation of paper  
5 ballots as provided in the general election procedures in chapter 12-20. The person who has the  
6 highest number of votes for any office is elected. If two or more persons have an equal and the  
7 highest number of votes for any office, the election deputies shall at once publicly determine by  
8 lot which person is elected. After the count has been completed, the secretary shall enter a  
9 statement of the result in the minutes and publicly read the results at the meeting. The reading  
10 shall be deemed notice of the result of the election.

11 Section 7. That § 6-16-2 be amended to read as follows:

12 6-16-2. The application for organization shall be a petition verified by one or more  
13 circulators by affidavit stating that each affiant personally witnessed the signatures on the petition  
14 and believe the signatures to be genuine. The petition shall be signed by at least twenty-five  
15 percent of the landowners within the proposed district ~~who are also registered voters within the~~  
16 ~~district~~. If the proposed district is in two or more counties, a petition shall be filed in each county  
17 and each petition shall be signed by at least ~~twenty~~ twenty-five percent of the landowners within  
18 the proposed district ~~who are also registered voters within the proposed district in that county~~.  
19 The petition shall be accompanied by a deposit covering the estimated costs as determined by  
20 the county auditor of the public notices and the conduct of the election for the formation of the  
21 district.

22 Section 8. That § 6-16-4 be amended to read as follows:

23 6-16-4. The county auditor shall publish the notice ~~of the voter registration deadline at least~~  
24 ~~once each week for two consecutive weeks, the last publication to be not less than twenty-five~~  
25 ~~nor more than thirty days prior to the election. The auditor shall publish notices of election at~~

1 least once each week for two consecutive weeks, the last publication to be not less than four nor  
2 more than ten days before the election in a legal newspaper or newspapers of general circulation  
3 in the proposed district.

4 Section 9. That § 6-16-6 be amended to read as follows:

5 6-16-6. A person who is a landowner in the proposed district ~~and is registered to vote in the~~  
6 ~~proposed district~~ may vote in the elections provided for in § 6-16-5. However, the qualifications  
7 of a voter for irrigation district elections are provided in chapter 46A-4. ~~Absentee voting is~~  
8 ~~allowed~~ A person who is a landowner in the proposed district may vote absentee pursuant to  
9 chapter 12-19 for the election on the question of formation of the special district.

10 Section 10. That § 6-16-7 be amended to read as follows:

11 6-16-7. If there is a conflict regarding who has a right to vote in the election pursuant to §§  
12 6-16-4 to 6-16-6 and sections 1 to 6, inclusive, of this Act, the judges of election shall settle the  
13 conflict by referring to the official records of the register of deeds ~~and county auditor~~ in each  
14 county where these official records are held.

15 Section 11. That § 31-12A-3 be amended to read as follows:

16 31-12A-3. Any landowner who owns land lying within the limits of the territory proposed  
17 to be organized into a district may file a petition with the board of county commissioners asking  
18 that a road district be organized to function in the territory described in the petition. The petition  
19 shall set forth:

- 20 (1) The proposed name of the district;
- 21 (2) That there is need for road work in the territory described in the petition;
- 22 (3) A description of the territory proposed to be organized as a district; and
- 23 (4) A request ~~that the board of county commissioners define the boundaries for the~~  
24 ~~district~~; that a referendum be held within the territory ~~so defined~~ on the question of  
25 the creation of a road district in the territory; ~~and that the board determine that such~~

1 a district be created.

2 Section 12. That § 31-12A-13 be repealed.

3 ~~31-12A-13. The board of county commissioners is authorized to expend funds of the county,~~  
4 ~~in the manner and to the extent permitted by law for other county expenditures, in the payment~~  
5 ~~of necessary costs of preparation of petitions, surveys, maps, and applications submitted under~~  
6 ~~the provisions of this chapter, and of the holding of elections on the incorporation of road~~  
7 ~~districts hereunder. The county board is also authorized to accept and expend any funds~~  
8 ~~appropriated to the State Department of Transportation and allocated by that department to the~~  
9 ~~county for these purposes.~~

10 Section 13. That § 31-12A-15 be amended to read as follows:

11 31-12A-15. ~~In every~~ Each road district shall hold an annual ~~election of officers shall be held~~  
12 meeting on the first Tuesday after the anniversary date of the first election ~~at such place in the~~  
13 ~~district as the board of trustees shall designate. Such election shall be conducted according to~~  
14 ~~chapter 9-13.~~

15 Section 14. That § 31-12A-17 be amended to read as follows:

16 31-12A-17. ~~The trustees~~ Each trustee to be elected at the initial election; shall be nominated  
17 by the voters in attendance at the meeting in which the organizational election is held. ~~Any~~  
18 ~~trustee to be elected at subsequent elections, shall be nominated by filing with the district clerk~~  
19 ~~not less than fifteen days before any subsequent election, certificates of nomination for the offices~~  
20 ~~of trustee. The certificates shall be in writing and shall contain the name of the candidate,~~  
21 ~~residence, business address, and the office for which the candidate is named, and shall be signed~~  
22 ~~by at least five percent of the qualified voters.~~

23 Section 15. That § 34-11A-28 be amended to read as follows:

24 34-11A-28. The boundaries of any ambulance district organized under the provisions of this  
25 chapter may be changed in the manner prescribed by §§ 34-11A-4 to ~~34-11A-10~~ 34-11A-8,

1 inclusive, ~~but. However,~~ the ~~changes~~ change of boundaries of ~~any such a~~ district may not impair  
2 or affect ~~its~~ the district's organization or ~~its~~ right in or to property; nor may it the change of  
3 boundaries impair, affect, or discharge any contract, obligation, lien, or change for or upon which  
4 ~~it might~~ the district may be liable had ~~such~~ the change of boundaries not been made.

5 Section 16. That § 34-11A-29 be amended to read as follows:

6 34-11A-29. A regular meeting of the ~~registered voters who are residing within the boundaries~~  
7 landowners of a district shall be held in the first quarter of each calendar year and special  
8 meetings may be called by the board of directors at any time. ~~Notice thereof shall be given by the~~  
9 The secretary-treasurer shall give notice of a special meeting by one publication in a legal  
10 newspaper of general circulation in each county in which ~~such~~ the district is situated. The  
11 meeting shall be held not less than seven days nor more than fourteen days after the date of  
12 publication of ~~such~~ the notice.

13 Section 17. That § 34-31A-43 be amended to read as follows:

14 34-31A-43. A regular meeting of the ~~electors who are owners of any interest in real property~~  
15 ~~assessed for taxation~~ landowners in the district ~~and who are residing within the boundaries of a~~  
16 ~~district~~ shall be held in the first quarter of each calendar year and special meetings may be called  
17 by the board of directors at any time. ~~Notice thereof shall be given by the~~ The secretary-treasurer  
18 shall give notice of a special meeting by one publication in a legal newspaper of general  
19 circulation in each county in which ~~such~~ the district is situated. The meeting shall be held not less  
20 than seven days nor more than fourteen days after the date of publication of ~~such~~ the notice.

21 Section 18. That § 34A-5-18 be amended to read as follows:

22 34A-5-18. The board of trustees shall give notice of the election provided for in § 34A-5-17  
23 pursuant to ~~§ 34A-5-8~~ § 6-16-4, and the question shall be submitted to the voters on a separate  
24 ballot and be so stated as to enable each voter to vote for or against the proposed question.

25 Section 19. That § 46A-14-8 be amended to read as follows:

1 46A-14-8. The initiating petition shall contain the following:

2 (1) The name of the proposed district;

3 (2) That there is need in the interest of the public health, safety, and welfare for creation  
4 of a district to accomplish improvements in the watershed;

5 (3) A statement in general terms setting forth the purposes of the contemplated  
6 improvements, the territory to be included in the district; and all proposed  
7 subdivisions thereof, if any, of the district;

8 (4) The number ~~and names~~ of managers, ~~which~~ shall be three or five members, ~~to be~~  
9 ~~appointed as first managers of the proposed district, and who shall act for a period of~~  
10 ~~one year or until the first annual meeting. They.~~ Each manager shall be ~~owners of own~~  
11 land located in the proposed district but ~~none shall~~ may not be a public officer of the  
12 state or federal government;

13 (5) A list of landowners and the total acreage of land owned by each within the proposed  
14 district;

15 (6) A map of the proposed district and the ownership of all land in the proposed district,  
16 except the outline only of the jurisdiction of the authorized officials of municipalities  
17 included need be shown; and

18 (7) The location of the official place of business of the proposed district;

19 ~~(8) A request for the organization of the district as proposed and appointment of the first~~  
20 ~~managers.~~

21 Section 20. That § 46A-14-38 be amended to read as follows:

22 46A-14-38. ~~Candidates shall file their written applications with the secretary of the board of~~  
23 ~~managers, at least thirty days before elections. All managers and candidates~~ Each manager and  
24 candidate shall be landowners of own land in the district. ~~Landowners residing within or outside~~  
25 ~~the district may vote in person, or by absentee ballot.~~



Section 21. That § 46A-18-4 be amended to read as follows:

46A-18-4. The petition established pursuant to § 46A-18-2 shall contain:

- (1) The name of the proposed district;
- (2) The object and purpose of the water project and works proposed to be constructed or acquired, together with a general description of the nature, location, and method of operation of the proposed works or program of activities;
- (3) A legal description of the lands constituting the proposed district and the ~~names~~ name of any ~~municipalities~~ municipality included partly or wholly within the boundaries of the proposed district;
- (4) The location of the principal place of business of the proposed district; and
- (5) The number of members of the board of directors of the proposed district, which number may not be less than three nor more than seven, and a statement as to ~~whether~~ if the directors shall be elected at large or shall be elected by director divisions; ~~the names and addresses of the members who shall serve as directors until their successors are elected and qualified as provided in this chapter, and, if director divisions are provided for, the respective divisions that the directors are to represent. The persons named in the petition as directors. Each director shall be a qualified voters voter of the district and, if director divisions are provided for, shall be a qualified voters voter of the respective divisions division the directors are director is to represent.~~

Section 22. That § 46A-18-21 be amended to read as follows:

46A-18-21. The initial district directors ~~named in the petition for formation, upon establishment of the district by the Board of Water and Natural Resources,~~ shall assume the duties of ~~their offices~~ office and serve until ~~their~~ successors are duly elected and qualified.

Section 23. That § 46A-18-23 be amended to read as follows:

1       46A-18-23. Prior to May first of each year, on dates established by the directors, an annual  
2       meeting of the district shall be held during which the ~~voters~~ landowners shall elect, ~~by ballot,~~  
3       ~~under the direction of the secretary of the district,~~ directors to replace those the directors whose  
4       terms have expired. Each director shall own land in the district. Newly elected directors shall  
5       assume office at the time of ~~their~~ election.

6       Section 24. That § 46A-18-24 be repealed.

7       ~~46A-18-24. The water project district directors shall publish a notice once each week for~~  
8       ~~three consecutive weeks immediately prior to the annual election and meeting stating the time,~~  
9       ~~place and purpose of the election and meeting, the names of the director candidates and the~~  
10       ~~director division that each candidate is to represent in a legal newspaper of general circulation~~  
11       ~~in each county that has land situated within the district. The notice shall also include information~~  
12       ~~on any project reserve fund established by the district, as provided in § 46A-18-57.1.~~

13       Section 25. That § 46A-18-25 be repealed.

14       ~~46A-18-25. Nominations of director candidates to be elected at the annual election shall be~~  
15       ~~by nominating petition signed by at least twenty-five qualified voters or ten percent of the~~  
16       ~~qualified voters, whichever is less, in the district, if the directors are elected at large, or signed~~  
17       ~~by at least ten qualified voters or ten percent of the qualified voters, whichever is less, in the~~  
18       ~~director division if the directors are elected by division. The petitions shall be in a form~~  
19       ~~prescribed by the state board of elections and shall be filed with the secretary of the district at~~  
20       ~~least thirty days prior to the election.~~

1    **BILL HISTORY**

2    1/12/99 First read in House and referred to Local Government. H.J. 34

3    1/19/99 Scheduled for Committee hearing on this date.

4    1/19/99 Local Government Do Pass Amended, Passed, AYES 12, NAYS 1. H.J. 80

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

771C0077

## HOUSE LOCAL GOVERNMENT COMMITTEE

### ENGROSSED NO. **HB1016** - 1/20/99

Introduced by: The Committee on Local Government at the request of the State Board of Elections

1 FOR AN ACT ENTITLED, An Act to revise the procedure for school district elections  
2 involving tie votes or request for recount.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-7-9.5 be repealed.

5 ~~—13-7-9.5. If there are more than two candidates for a position on the school board and two~~  
6 ~~candidates are tied for a position after a recount has been held according to § 13-7-19.1, a~~  
7 ~~secondary election between the tied candidates shall be held.~~

8 Section 2. That § 13-7-9.6 be repealed.

9 ~~—13-7-9.6. If a secondary election is required according to § 13-7-9.5, the secondary election~~  
10 ~~shall be held two weeks from the date of the first election. The secondary election shall be held~~  
11 ~~at the same polling places, be conducted, returned and canvassed, and the result declared in the~~  
12 ~~same manner as the first election except that the business manager shall publish a notice of~~  
13 ~~election only once during the week preceding the secondary election.~~

14 ~~—The person receiving the highest number of votes at the secondary election shall be elected.~~  
15 ~~If there is a tie vote after a secondary election the tie shall be resolved according to the~~  
16 ~~provisions of § 13-7-19.1.~~

1 Section 3. That § 13-7-19.2 be amended to read as follows:

2 13-7-19.2. If any candidate for the school board is defeated by a margin not exceeding two  
3 percent of the total votes cast for all candidates for the office, the candidate may, within five days  
4 after completion of the official canvass, file with the ~~recount referee~~ business manager of the  
5 school district a written request for a recount. Upon receipt of a recount request, the ~~recount~~  
6 ~~referee~~ business manager shall set the time and place for a recount. A recount board shall be  
7 established consisting of one person chosen by each candidate declared elected and by each  
8 candidate who is eligible to request a recount. If this board consists of an even number of  
9 persons, one additional recount board member shall be appointed by the ~~recount referee~~ business  
10 manager who shall be mutually agreeable to each candidate involved in the recount. The person  
11 having custody of the ballot boxes containing the ballots to be recounted shall produce ~~them~~ the  
12 ballot boxes before ~~such~~ the recount board. All questions arising on the recount shall be  
13 determined by majority vote of ~~such~~ the recount board. The recount shall proceed as  
14 expeditiously as reasonably possible until completed.

1    **BILL HISTORY**

2    1/12/99 First read in House and referred to Local Government. H.J. 34

3    1/19/99 Scheduled for Committee hearing on this date.

4    1/19/99 Local Government Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 80

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

159C0281

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB1018** - 1/20/99

Introduced by: The Committee on Local Government at the request of the State Board of Elections

1 FOR AN ACT ENTITLED, An Act to allow the precinct superintendent to assign duties to the  
2 members of an election board and to consolidate the position of judge and clerk.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 9-13-16.1 be amended to read as follows:

5 9-13-16.1. Each voting precinct shall be presided over by an election board consisting of a  
6 minimum of two ~~clerks~~ precinct deputies and one ~~judge~~ precinct superintendent appointed by the  
7 governing body. ~~Judges and clerks~~ Each precinct superintendent and precinct deputy shall  
8 receive ~~such~~ compensation as which shall be fixed by the governing body.

9 Section 2. That § 12-3-11 be amended to read as follows:

10 12-3-11. Interpreters shall be provided for precincts as determined by the auditor or person  
11 in charge of that election and interpreters shall be paid the same as ~~judges of election~~ precinct  
12 deputies. All expenses shall be paid out of the county general fund or other appropriate political  
13 subdivision fund.

14 Section 3. That § 12-15-1 be amended to read as follows:

15 12-15-1. The county auditor shall, not less than twenty days before any election, appoint a  
16 ~~minimum of one judge of election, two clerks of election and judges and clerks~~ precinct

1 superintendent and two precinct deputies who shall constitute the precinct election board and  
2 a precinct superintendent and two precinct deputies of the counting board if ~~such~~ the board is  
3 appointed pursuant to § 12-15-14 or 12-15-14.1 for each of the voting precincts of the county.  
4 Two or four additional ~~judges~~ precinct deputies may be appointed. ~~The auditor shall designate~~  
5 ~~one judge of elections and one judge of the counting board as superintendent of their respective~~  
6 ~~boards.~~ The county auditor shall make the appointments from lists of names submitted by the  
7 county central committee of each party. If a list is submitted, it ~~must be received by the county~~  
8 auditor ~~no less than~~ fails to receive the list at least forty-five ~~calendar~~ days prior to an election:  
9 ~~If no names are presented, the county auditor shall use his own discretion~~ make the  
10 appointments.

11 Section 4. That § 12-15-2 be amended to read as follows:

12 12-15-2. Any ~~judge or clerk~~ precinct superintendent or precinct deputy appointed under the  
13 provisions of § 12-15-1 shall be a registered voter and a resident of the precinct ~~or election~~  
14 ~~district~~ for which ~~he~~ the person is appointed. If, by the time prescribed in § 12-15-1, a sufficient  
15 number of ~~judges or clerks~~ members of the precinct election board are unable to be appointed,  
16 a vacancy may be filled by appointing any registered voter of the county in which the precinct  
17 is located provided the voter meets the party distribution required by § 12-15-3.

18 Section 5. That § 12-15-2.1 be amended to read as follows:

19 12-15-2.1. No person appointed as a ~~judge or clerk of any election~~ precinct superintendent  
20 or precinct deputy may serve as a poll watcher at that election.

21 Section 6. That § 12-15-3 be amended to read as follows:

22 12-15-3. In the appointment of ~~judges of election~~ the members of the precinct election board  
23 and of the counting board under this chapter, if three or more parties have candidates on the  
24 official ballot, one ~~judge~~ precinct deputy shall be appointed from each party ~~having~~ whose  
25 candidate for Governor in the last gubernatorial election had at least fifteen percent of the ~~voters~~



1 ~~votes~~ as shown by the precinct ~~or district~~ returns of the last preceding general election. If ~~but~~ two  
2 parties have candidates on such ballots, the ~~judges~~ members of the precinct election board shall  
3 be selected ~~therefrom~~ from each party and the party receiving a majority of the votes cast for  
4 Governor in the election precinct at the last preceding gubernatorial election shall have a majority  
5 of ~~judges~~ the members of the precinct election board. In all cases the ~~judge~~ selected as precinct  
6 ~~superintendent of elections~~ shall belong to the party whose candidate received the most votes for  
7 Governor in the last gubernatorial election in that precinct. ~~Clerks of election and counting~~  
8 ~~boards shall be of the different political parties represented in the primary election, if possible.~~  
9 If a precinct has been created since the last election, ~~one of the judges and the~~ precinct  
10 ~~superintendent of elections~~ shall belong to the party which received the most votes for Governor  
11 in the county in the last gubernatorial election.

12 Section 7. That § 12-15-7 be amended to read as follows:

13 12-15-7. Prior to each general or primary election, each county auditor, assisted by the state's  
14 attorney, shall call together the superintendents from each of the precincts in the county, and  
15 ~~such clerks and judges of elections~~ any precinct deputy as the county auditor may deem  
16 appropriate, at some convenient time and place and instruct them ~~and the judges and clerks of~~  
17 ~~all counting boards~~ on the election laws and the duties of the ~~judges and clerks of election and~~  
18 ~~counting boards. The superintendents and all judges and clerks including the judges and clerks~~  
19 ~~of the counting boards who are~~ precinct superintendent and precinct deputies. Any person who  
20 is called to the meeting and who ~~attend~~ attends the meeting shall be paid a fee fixed by the board  
21 of county commissioners of not less than five dollars for attending the meeting.

22 Section 8. That § 12-15-9 be amended to read as follows:

23 12-15-9. ~~Previous to votes being taken, the judges and the clerks~~ Before performing election  
24 day duties, each precinct superintendent and precinct deputy of the election and counting boards  
25 shall severally take an oath in the following form:

1 "I, A.B., do solemnly swear (or affirm) that I will perform the duties of ~~judge (or clerk)~~  
2 precinct superintendent or (precinct deputy) according to law and the best of my ability and that  
3 I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the election about  
4 to be held."

5 The ~~judges of election and counting boards~~ members of the precinct election board may  
6 administer the oath to each other ~~and to the clerks of the election and counting boards~~. The  
7 person administering the oaths shall cause an entry thereof to be made and ~~subscribed by him~~  
8 signed by the person and prefixed to the pollbook.

9 Section 9. That § 12-15-10 be amended to read as follows:

10 12-15-10. If any person appointed as ~~judge or clerk of election or as a judge or clerk of the~~  
11 ~~counting board~~ precinct superintendent or precinct deputy neglects or refuses to be sworn or to  
12 act as such, the position of the person shall be filled by the voters of the precinct present at the  
13 polling place when it opens, from the different political parties, as provided in this chapter. The  
14 person so elected to fill the vacancy is vested with the same power for that election, as if  
15 regularly appointed.

16 Section 10. That § 12-15-11 be amended to read as follows:

17 12-15-11. ~~The judges and clerks of each election and counting boards~~ Each precinct  
18 superintendent and precinct deputy shall receive a fee to be established annually by resolution  
19 of the board of county commissioners at its first regular meeting each year. The person delivering  
20 the pollbooks and ballot boxes to the proper authority at the county seat shall receive the county  
21 rate for mileage as established pursuant to § 7-7-24, for miles necessarily traveled in going to and  
22 returning from making the delivery.

23 Section 11. That § 12-15-13 be amended to read as follows:

24 12-15-13. The county auditor shall, on the receipt of the returns of any primary, general, or  
25 special election make out a certificate stating the fee ~~the judges and clerks of the election board~~

1 ~~and counting board of such election are~~ that each precinct superintendent and precinct deputy  
2 ~~is entitled for their services.~~ The county auditor shall submit the certificate to the board of county  
3 commissioners at its next session. The board shall order the fee to be paid out of the county  
4 treasury.

5 Section 12. That § 12-15-14 be amended to read as follows:

6 12-15-14. In ~~every~~ each election precinct ~~where~~ in which the number of ballots to be voted  
7 on paper ballots, including absentee ballots, has in prior general elections exceeded three hundred  
8 voters, the auditor shall appoint a precinct counting board ~~or boards~~ to be composed of ~~three~~  
9 ~~judges~~ five precinct deputies, one of whom shall be superintendent, ~~and two clerks~~ who shall  
10 count the ballots cast in the general election under the direction of the superintendent of the  
11 counting board.

12 Section 13. That § 12-16-17 be amended to read as follows:

13 12-16-17. ~~Where paper ballots are used, the~~ The county auditor shall provide official and  
14 sample ballots to each precinct ~~using them~~ in the county. The quantity provided for a primary  
15 election shall be at least ten percent more than the number of votes cast for the gubernatorial  
16 candidate of the respective parties in the preceding gubernatorial primary election. The quantity  
17 provided for a general election shall be at least ten percent more than the number of votes cast  
18 for all candidates for Governor as shown by the returns of the last preceding gubernatorial  
19 election. ~~In the case of newly created precincts, the quantity shall be determined by the reports~~  
20 ~~of the judges of elections for the same.~~ The county auditor shall also provide and retain in that  
21 office an ample supply of all official ballots, and if at any time before or during an election, an  
22 additional supply for any precinct shall be requested by the ~~judges of election~~ precinct  
23 superintendent, the county auditor shall immediately cause to be delivered, to the ~~judges of~~  
24 ~~election of the precinct~~ precinct superintendent, a supply of extra official ballots. If the supply  
25 of official ballots has been completely exhausted, the county auditor may make emergency

1 substitution by delivering or authorizing the use of sample ballots or photocopies of the official  
2 ballot. The election board shall account for any sample ballots or photocopies authorized to be  
3 used.

4 Section 14. That § 12-16-19 be amended to read as follows:

5 12-16-19. ~~Such~~ The ballots, together with all other election supplies may be delivered to the  
6 precinct superintendent of elections or a judge for such precincts or precinct deputy for each  
7 precinct at the time ~~they~~ the precinct superintendent and precinct deputies are called together to  
8 receive instructions pursuant to § 12-15-7; ~~and in case.~~ If any ~~such~~ precinct superintendent; or  
9 ~~another judge~~ precinct deputy from that precinct ~~who shall give receipt therefor~~ is not present  
10 to receive instructions, the ballots, election supplies, and the ballot boxes for ~~his~~ the precinct shall  
11 be delivered to the sheriff for delivery to ~~said~~ the precinct superintendent ~~of election.~~

12 Section 15. That § 12-16-20 be amended to read as follows:

13 12-16-20. The ~~judge of election~~ precinct superintendent or precinct deputy receiving ~~such~~  
14 the package of ballots shall at the opening of the polls on election day cause the same to be  
15 delivered with the seal unbroken to the election board of ~~his~~ the election precinct ~~and shall take~~  
16 ~~receipts therefor from the judges of election, which receipts shall be returned.~~ The precinct  
17 superintendent or precinct deputy shall receive a receipt from a member of the precinct board  
18 and shall return the receipt to the county auditor with the election returns.

19 Section 16. That § 12-16-21 be amended to read as follows:

20 12-16-21. In case the ballots to be furnished to any precinct ~~shall~~ are, for any reason ~~fail to~~  
21 ~~be,~~ not duly delivered or received, or ~~after~~ if the delivery ~~be~~ has been exhausted, destroyed, or  
22 stolen, ~~it shall be the duty of the judge of election or election board of such precinct~~ the precinct  
23 superintendent shall immediately ~~to~~ procure from the county auditor replacement ballots.

24 Section 17. That § 12-16-25 be amended to read as follows:

25 12-16-25. ~~The judges of election shall~~ A member of the precinct election board may post no

1 less than one of ~~such~~ the instruction cards in each booth or compartment provided for the  
2 ~~preparation~~ voting of ballots and not less than three of ~~such~~ the instruction cards elsewhere in  
3 and about the polling place upon the day of election.

4 Section 18. That § 12-16-30 be amended to read as follows:

5 12-16-30. Before opening the polls the county auditor or officer charged with the conduct  
6 of a local election shall deliver to ~~a judge of election~~ the precinct superintendent of each precinct  
7 within the county, for use at the polling place of the precinct, a rubber ~~or other~~ stamp. The stamp  
8 shall contain the words, "official ballot," the name or number of the election precinct, the name  
9 of the jurisdiction holding the election, and the date of the election. The date may be omitted if  
10 it is pre-printed on all ballots for the election. The stamp and other supplies for the election shall  
11 be delivered and receipted for by ~~each officer~~ a member of the precinct election board in the  
12 manner and at the time as provided in this chapter for the delivery and receipt of packages of  
13 ballots.

14 Section 19. That § 12-16-36 be amended to read as follows:

15 12-16-36. There shall be at the right of each name or question in one or two horizontal lines  
16 a sufficient number of squares for the tally marks as provided in § 12-16-34, on the tally sheets  
17 for each precinct, to contain the tally marks for one-third more votes than were cast in ~~such~~ the  
18 precinct at the last preceding general election, not exceeding six hundred in any case. There shall  
19 be sufficient spaces at the right of the squares on ~~such~~ the tally sheet so that ~~the clerk~~ a member  
20 of the precinct election board may write out the total number of votes tallied for the candidate  
21 or question.

22 Section 20. That § 12-16-41 be amended to read as follows:

23 12-16-41. In any case in which the certificate of the ~~precinct judges~~ members of the precinct  
24 election board as to the number of votes cast for any candidate or in favor of or against any  
25 question submitted to the voters ~~shall~~ may not agree with the votes as shown by ~~such~~ the tally

list, the canvassing board to which ~~such~~ the returns are made shall take as correct the number of ~~such~~ votes shown by ~~such~~ the tally list rather than the certificate.

Section 21. That § 12-17B-9 be amended to read as follows:

12-17B-9. Upon completion of the voting and after sealing the ballot box, two of the ~~judges~~ of election members of the precinct election board, of different major political parties, shall, by the most direct route, transport the box to the central counting location designated by the person in charge of the election or the ballots may be transported to the counting location by a sheriff's deputy and two deputy county auditors, one of each major political party, or by two deputy county auditors, one of each major political party.

Section 22. That § 12-18-1.1 be amended to read as follows:

12-18-1.1. Before the opening of the polls the ~~judges of election~~ members of the precinct election board shall count and verify against the receipt given the ballots delivered to ~~them~~ the precinct for the purposes of the election.

Section 23. That § 12-18-1.2 be amended to read as follows:

12-18-1.2. The precinct superintendent shall ~~be in charge of the registration list and inactive registration list and shall designate one judge to be in charge of the official ballots and the official stamp. The remaining judge shall be in charge of receiving and depositing in the ballot boxes the ballots as they are voted. The voter may place the voter's voted ballot in the ballot box to insure the privacy of the voter's vote after showing the judge responsible for the ballot box the official stamp on the ballot~~ have charge of the conduct at the polling place and supervise the precinct deputies. The precinct superintendent shall issue instructions and assign the duties to each person for maintaining the registration lists and the pollbook and issuing and receiving the official ballots. The duties for each person may be interchanged or rotated during the course of the day.

Section 24. That § 12-18-1.3 be amended to read as follows:

12-18-1.3. If punch card ballots are used, before the opening of the polls the ~~judges of~~

1 ~~election~~ members of the precinct election board shall compare the ballots used in the marking  
2 devices with the sample ballots furnished and see that the names, numbers, and letters on the  
3 sample ballots agree and shall certify that fact on forms provided by the person in charge of the  
4 election.

5 Section 25. That § 12-18-1.5 be amended to read as follows:

6 12-18-1.5. In those precincts where counting boards have been appointed, the ~~judges and~~  
7 ~~clerk of election~~ precinct superintendent and precinct deputies shall remain at the place of  
8 election at all times after the polls are opened until the polls are closed, the election supplies are  
9 turned over to the counting board and the certificate and receipt required by § ~~12-20-28~~ § 12-20-  
10 1 have been signed. At this time, the counting board shall assume its duties and the election  
11 board ~~shall be~~ is excused. The members of the counting board shall remain at the place of vote  
12 counting at all times from the time ~~they assume their~~ the counting board assumes the duties until  
13 the completion of the vote count and execution of the returns on the election.

14 Section 26. That § 12-18-4 be amended to read as follows:

15 12-18-4. Before opening the polls each ballot box shall be carefully examined by the ~~judges~~  
16 ~~of election~~ members of the precinct election board and everything ~~therein~~ in each ballot box shall  
17 be removed. Each ballot box shall then be sealed and may not be opened during the election  
18 except for vote counting as provided for in chapter 12-20.

19 Section 27. That § 12-18-5 be amended to read as follows:

20 12-18-5. ~~In paper ballot precincts, the clerk of election~~ A member of the precinct election  
21 board belonging to a political party which is not the same as the political party of the  
22 ~~superintendent~~ member of the precinct election board who has the registration list shall keep a  
23 poll list which shall contain in numerical order the names of all persons voting at the election.

24 Section 28. That § 12-18-7.1 be amended to read as follows:

25 12-18-7.1. Any person whose name appears on the precinct registration list ~~in the possession~~

1 ~~of the precinct election judges~~ may vote at that election. However, if a person's name does not  
2 appear on the registration list, but the person does present an acknowledgment notice, the person  
3 shall be permitted to vote if one of the ~~judges~~ members of the precinct election board  
4 communicates with the office of the county auditor and confirms that the person's name was  
5 erroneously omitted from the list. If it is not possible to communicate with the office of county  
6 auditor, the person may vote after executing an emergency voting card pursuant to § 12-18-7.2.

7 Section 29. That § 12-18-7.2 be amended to read as follows:

8 12-18-7.2. If any person attempting to vote in any election claims to be registered or any  
9 person attempting to vote in any election claims to be on the inactive registration list but does  
10 not possess an acknowledgment notice and the person's name does not appear in the registration  
11 list of the precinct, the person may vote if one of the ~~election judges~~ members of the precinct  
12 election board first confirms by telephone or other means with the county auditor or a deputy  
13 auditor that the name was erroneously omitted from the list, and an emergency voting card, in  
14 duplicate, in the form prescribed by the State Board of Elections is signed by the applicant and  
15 ~~the judges~~ each member of the precinct election board. The original emergency voting card shall  
16 be retained by the precinct superintendent ~~of elections~~ as part of the precinct superintendent's  
17 permanent records, and the duplicate shall be given to the voter. In a primary election, the party  
18 affiliation of any voter using the emergency voting procedure of this section shall be designated  
19 on the emergency voting card.

20 Section 30. That § 12-18-10 be amended to read as follows:

21 12-18-10. ~~When any~~ If a person shall make makes an application for ballots, or ~~where~~ if an  
22 absentee ballot has been cast, ~~his~~ the person's right to vote at that poll and election may be  
23 challenged only as to ~~his~~ the person's identity as the person registered whom ~~he~~ the person claims  
24 to be or on grounds that within fifteen days preceding the election ~~he~~ the person has been  
25 convicted of a felony or declared by proper authority to be mentally incompetent, ~~and such~~. The



1 proceedings shall ~~thereupon be had~~ be conducted before the ~~judges of election precinct~~  
2 superintendent and precinct deputies who shall determine from the evidence presented whether  
3 or not the person ~~shall be~~ is permitted to vote and ~~they~~ the members of the precinct election  
4 board shall indicate beside the name on the registration list the ground stated and the result of  
5 ~~their~~ the precinct election board's decision.

6 Section 31. That § 12-18-12 be amended to read as follows:

7 12-18-12. Before delivering a ballot to any voter the ~~judge having~~ member of the precinct  
8 election board in charge of the ballots shall stamp on ~~its~~ the back and near the top of the ballot  
9 the official stamp provided for that purpose.

10 Section 32. That § 12-18-13 be amended to read as follows:

11 12-18-13. No voter ~~shall~~ may receive or vote a ballot from any other person than the ~~judge~~  
12 ~~of election having~~ precinct superintendent or precinct deputy in charge of the ballots, nor ~~shall~~  
13 may any person other than ~~such judges of election~~ the precinct superintendent or precinct deputy  
14 deliver a ballot to ~~such~~ the voter.

15 Section 33. That § 12-18-23 be amended to read as follows:

16 12-18-23. ~~Every~~ Each voter who does not vote a ballot delivered to ~~him by the judges of~~  
17 ~~election having~~ the voter by a member of the precinct election board in charge of the ballots shall,  
18 before leaving the polling place, return ~~such~~ the ballot to ~~such judges~~ the member of the precinct  
19 election board in charge of the ballot box.

20 Section 34. That § 12-18-24 be amended to read as follows:

21 12-18-24. If any voter spoils a ballot ~~he,~~ the voter may obtain another ballot, and so on,  
22 successively, not to exceed three ballots in all, upon returning to ~~the ballot clerk~~ a member of the  
23 precinct election board the spoiled ballot. In obtaining a ballot to replace a spoiled one, the name  
24 of the voter shall be given and the number of the spoiled ballot ~~so spoiled, which.~~ The number  
25 shall be noted opposite ~~his~~ of the voter's name as "spoiled." The ballots ~~thus~~ that are returned

1 shall be forthwith canceled by writing the words, "spoiled and replaced", across the face of the  
2 ballot and ~~all such ballots~~ each spoiled ballot shall be placed in a separate envelope identifying  
3 ~~them the spoiled ballots~~ as such and stating the number ~~thereof~~ of spoiled ballots for accounting  
4 purposes.

5 Section 35. That § 12-18-27 be amended to read as follows:

6 12-18-27. No person ~~shall~~ may show ~~his~~ a ballot after it is marked to any person in such a  
7 way as to reveal the contents ~~thereof~~ of the ballot, or the name of ~~the~~ any candidate ~~or candidates~~  
8 for whom ~~he~~ the person has marked ~~his~~ a vote, ~~nor shall~~. Nor may any person solicit the voter  
9 to show the ~~same~~ voter's ballot. Immediately after marking ~~his~~ the ballot the voter shall fold and  
10 refold the ballot, if necessary, ~~for deposit in the ballot box in such a way that~~ leaving the official  
11 stamp ~~shows when it is handed to the judge~~ exposed.

12 Section 36. That § 12-18-28 be amended to read as follows:

13 12-18-28. When a ballot is ~~received pursuant to § 12-18-27 with the official stamp showing,~~  
14 ~~the judge~~ ready for deposit in the ballot box, the member of the precinct election board in charge  
15 of the ballot box, without opening the ~~same~~ ballot or permitting it to be opened or examined  
16 except to ascertain ~~whether it be~~ that the ballot is a single ballot, shall deposit it the ballot in the  
17 ballot box, ~~making such additional folds as necessary to deposit it. The voter may place the~~  
18 voter's voted ballot in the ballot box in insure the privacy of the voter's vote after showing the  
19 official stamp on the ballot to the member of the precinct election board in charge of the ballot  
20 box.

21 Section 37. That § 12-19-12 be amended to read as follows:

22 12-19-12. If ~~any~~ an absentee ballot is delivered to ~~any~~ a polling place after the polls are  
23 closed ~~such, the absentee ballot shall neither~~ may not be counted ~~nor~~ or opened, but a ~~clerk or~~  
24 ~~judge of the election at such polling place~~ member of the precinct election board shall  
25 immediately endorse on the envelope the following: "Received after closing of polls", and

1 ~~subscribe his~~ sign the person's signature thereto and return ~~same~~ the absentee ballot with the  
2 other ballots to the officer in charge of the conduct of the election.

3 Section 38. That § 12-19-48 be amended to read as follows:

4 12-19-48. If ~~any~~ an absentee ballot ~~shall be~~ is delivered to ~~any~~ an absentee ballot counting  
5 board after the polls are closed ~~such the absentee~~ ballot ~~shall neither~~ may not be counted ~~nor or~~  
6 opened, but a ~~clerk or judge~~ member of the absentee ballot counting board shall immediately  
7 endorse on the envelope the following: "Received after closing of polls," and sign ~~his~~ the person's  
8 name ~~thereon~~ on the envelope and return it the absentee ballot with the other ballots to the  
9 officer in charge of the election.

10 Section 39. That § 12-20-1 be amended to read as follows:

11 12-20-1. As soon as the polls are closed, the ~~judges of election~~ precinct superintendent and  
12 precinct deputies shall immediately deliver the ballot boxes, registration book, pollbook, and  
13 other election supplies, including voided and unused ballots, to the counting board, if appointed,  
14 and sign ~~the a~~ a certificate ~~required by § 12-20-28 . The judges and clerks of election~~ of transmittal  
15 and receipt as prescribed by the State Board of Elections. The members of the precinct election  
16 board or the counting board, if appointed, shall then immediately proceed to count publicly, in  
17 the presence of all persons desiring to attend the count, the votes received at the polls, and  
18 continue without adjournment until the count is completed. In counting the votes, ~~they~~ the  
19 members of the precinct election board or counting board shall use the tally sheets provided.

20 Section 40. That § 12-20-2 be amended to read as follows:

21 12-20-2. The box shall be opened and the ballots taken out, sorted so that all ballots on  
22 certain candidacies and issues are separately identified, and counted by the ~~judges~~ members of  
23 the precinct election board unopened, except ~~so far as~~ to ascertain if each ballot is single. If two  
24 or more ballots are found folded together and present the appearance of a single ballot, ~~they~~ the  
25 ballots shall be laid aside until the count of ballots is completed. Upon the comparison of the

count with the pollbook and registration list, or in machine precincts, with the number of return envelopes from absentee voters, and the appearance of the ballots, if a majority of ~~such judges~~ the members of the precinct election board are of the opinion that the ballots folded together were voted by one voter, ~~they the ballot~~ shall be endorsed as, "duplicate ballot of one voter not counted." If the ballot count does not agree with the number of votes in the pollbook, a comparison of the voters in the pollbook and the registration list shall be made and the correction of any mistakes ~~therein~~ shall be made.

Section 41. That § 12-20-3 be amended to read as follows:

12-20-3. Following the comparison of the pollbook and registration list in § 12-20-2, if the ballots in the box exceed the number of names in the pollbook, ~~they the ballots~~ shall be replaced in the box, after any ~~such of the~~ ballots folded together are canceled, and one of the ~~judges~~ precinct deputies shall publicly draw therefrom as many ballots, unopened, as equal to the excess.

Section 42. That § 12-20-5 be amended to read as follows:

12-20-5. The votes for the several candidates shall be counted in the order in which ~~they the~~ candidates occur upon the ballots. ~~If there is no counting board, all three judges, after separation of ballots, shall personally scrutinize each ballot as the vote on that ballot is announced. At least two judges precinct deputies, of opposite political parties, shall scrutinize each ballot in like manner if counting boards are used with the precinct superintendent acting to break any tie vote of the two judges precinct deputies ruling on a ballot. As the vote is announced each of the two clerks assisting the judges two precinct deputies shall make the mark required on the tally sheet sheets.~~

Section 43. That § 12-20-8 be amended to read as follows:

12-20-8. The ~~judges~~ precinct superintendent and precinct deputies, in counting the votes, shall endeavor to record the intention of the voter. The ~~judges~~ precinct superintendent and precinct deputies shall then hold the intention of the voter to be to vote for the candidate or

1 candidates before whose name the voter has placed a mark.

2 Section 44. That § 12-20-11 be amended to read as follows:

3 12-20-11. When the vote count is complete, the ~~judges of the election~~ members of the  
4 precinct election board shall enter upon ~~such~~ the blank list the true number of votes cast in the  
5 precinct for each person, measure, law, or amendment which appears upon the official ballot, and  
6 shall enclose the ~~same~~ completed list in the envelope described in § 12-20-10. The ~~judge of~~  
7 ~~election-deputed~~ precinct superintendent or precinct deputy chosen to deliver the election returns  
8 to the officer in charge of the election shall return ~~it~~ the completed list separate from any other  
9 envelopes or wrappers returned at the time ~~he delivers~~ the election returns are delivered.

10 Section 45. That § 12-20-18 be amended to read as follows:

11 12-20-18. After the votes have been counted, the ~~clerks~~ members of the precinct election  
12 board shall set down in ~~their~~ the pollbook and duplicate tally sheet on forms therein prescribed  
13 by the State Board of Elections the name of ~~every~~ each person voted for, the office for which  
14 ~~such~~ the person received votes, and the number of votes ~~such~~ each person received, the number  
15 being of votes each person received shall be expressed at length.

16 Section 46. That § 12-20-20 be amended to read as follows:

17 12-20-20. The counted ballots shall be sorted in the manner provided in § 12-20-2 and  
18 wrapped, sealed, and deposited in the ballot box ~~or boxes~~. ~~Judges of election~~. The precinct  
19 superintendent and precinct deputies, after the counting of ballots and deposit of the ballots  
20 counted in the ballot box ~~or boxes~~, shall properly seal, with seals furnished pursuant to  
21 § 12-16-26, any ballot box opening and the place where the clasp and box connect, and ~~all places~~  
22 each place where a ballot box may be opened before turning ~~such~~ the ballot box over to the  
23 person deputed to deliver ~~the same~~ it. A violation of this section is a Class 1 misdemeanor.

24 Section 47. That § 12-20-21 be amended to read as follows:

25 12-20-21. The sealed ballot box ~~so sealed~~, together with the pollbook and duplicate tally

1 sheet, registration lists, and the envelope containing the unofficial returns and all supplies and  
2 returns required, shall be returned by the precinct superintendent or a judge precinct deputy  
3 designated by ~~him~~ the precinct superintendent, to the officer in charge of the election immediately  
4 after completion of the vote count. ~~The No person delivering such envelope may not deface,~~  
5 ~~destroy, or remove any seals, or the tamper with the ballot box, envelope, pollbook, duplicate~~  
6 ~~tally sheet and, or registration lists, or otherwise tamper with any of them or remove any seals.~~  
7 A violation of this section is a Class 6 felony.

8 Section 48. That § 12-20-28 be repealed.

9 ~~—12-20-28. The election judges and the judges of counting boards and clerks shall then~~  
10 ~~complete and sign a certificate as prescribed by the state board of elections.~~

11 Section 49. That § 12-26-21 be amended to read as follows:

12 12-26-21. A person who intentionally disobeys a lawful command of a ~~judge or board of~~  
13 ~~judges~~ precinct superintendent or precinct deputy of any election, given in the execution of ~~their~~  
14 the person's duty as such at an election, is guilty of a Class 2 misdemeanor.

15 Section 50. That § 12-26-22 be amended to read as follows:

16 12-26-22. No person may cause any disturbance or breach of the peace, or engage in  
17 disorderly conduct in violation of § 22-13-1, or use threats of violence, whereby an election is  
18 impeded or hindered, or whereby the lawful proceedings of the ~~judges~~ precinct superintendent  
19 or precinct deputies, ballot counters, or canvassers of an election, in the discharge of ~~their~~ the  
20 person's duty, are interfered with. A violation of this section is a Class 2 misdemeanor.

21 Section 51. That § 12-26-24 be amended to read as follows:

22 12-26-24. A ~~judge of an election~~ precinct superintendent or precinct deputy who intentionally  
23 excludes any vote duly tendered, knowing that the person offering the same is lawfully entitled  
24 to vote at ~~such~~ the election, is guilty of a Class 2 misdemeanor.

25 Section 52. That § 12-26-25 be amended to read as follows:

12-26-25. No ~~judge of any election~~ precinct superintendent, precinct deputy, member of any counting board, member of any board of canvassers, messenger, or other officer authorized to take part in or perform any duty in relation to any count, canvass, or official statement of the votes cast at any election, may intentionally make any false count or canvass of ~~such the~~ votes, or make, sign, publish, or deliver any false return of ~~such the~~ election, knowing it to be false. No such person may intentionally deface, destroy, or conceal any statement or certificate entrusted to ~~his~~ the person's care. A violation of this section is a Class 2 misdemeanor.

Section 53. That § 12-26-27 be amended to read as follows:

12-26-27. A person who gives or offers a bribe to any ~~judge, clerk~~ precinct superintendent, precinct deputy, canvasser, or other officer of an election as a consideration for doing or omitting to do any act in violation of ~~his~~ the person's official duty in relation to such election, is guilty of a Class 2 misdemeanor.

Section 54. That § 13-7-12 be amended to read as follows:

13-7-12. Each voting precinct shall be presided over by an election board consisting of a minimum of two ~~clerk~~ precinct deputies and one ~~judge~~ precinct superintendent appointed by the school board. Members of school boards may serve on election boards.

~~Judges and clerks~~ Each precinct superintendent and precinct deputy other than members of school boards shall receive ~~such~~ compensation as shall be fixed by the school board and paid from the district treasury.

1    **BILL HISTORY**

2    1/12/99 First read in House and referred to Local Government. H.J. 35

3    1/19/99 Scheduled for Committee hearing on this date.

4    1/19/99 Local Government Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 80



# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0385

## HOUSE TRANSPORTATION COMMITTEE

### ENGROSSED NO. **HB1037** - 1/20/99

Introduced by: The Committee on Transportation at the request of the Public Utilities  
Commission

1 FOR AN ACT ENTITLED, An Act to revise certain motor carrier regulations and to increase  
2 motor carrier eligibility for single trip permits.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 49-28-1 be amended to read as follows:

5 49-28-1. Terms used in this chapter mean:

6 (1) "Commission," the Public Utilities Commission;

7 (2) "Corporation," a corporation, company, association, or joint stock association;

8 (3) "For hire," for remuneration of any kind, paid or promised for the transportation of  
9 persons or property. An occasional accommodative or reciprocal transportation  
10 service by a person not in the transportation business while on an errand for such  
11 person's benefit, is not a service for hire, even though the person transported shares  
12 in the cost or pays for the service;

13 (4) "~~ICC," the Interstate Commerce Commission~~ "FHWA," Federal Highway  
14 Administration;

15 (5) "~~ICC-exempt~~ Exempt motor carrier," an interstate motor carrier who is exempt from  
16 the ~~ICC's~~ FHWA's jurisdiction over interstate transportation;

- 1       (6)   ~~"ICC-regulated~~ Regulated motor carrier," an interstate motor carrier who is subject  
2       to the ~~ICC's~~ FHWA's jurisdiction over interstate transportation;
- 3       (7)   "Motor carrier," any person, corporation, lessee, trustee, or receiver operating any  
4       motor vehicle, trailer, or semitrailer on any public highway in this state for the  
5       transportation of persons or property, for hire;
- 6       (8)   "Motor vehicle," all vehicles or machines propelled by any power other than muscular  
7       used upon the public highways for the transportation of persons or property;
- 8       (9)   "Permit," the permit authorized to be issued under this chapter;
- 9       (10)  "Person," a natural person, firm, corporation, limited liability company, copartnership,  
10      company, association, joint stock company, or, the lessee, trustee, or receiver  
11      appointed by any court for any one of the foregoing;
- 12      (11)  "Public highway," every street, alley, public road, public thoroughfare, or highway in  
13      this state;
- 14      (12)  "Registration state," the state in which ~~an ICC~~ a regulated motor carrier selects to  
15      register its interstate motor carrier operations pursuant to 49 USC ~~1506(c)(1)(A)~~  
16      § 14504 and 49 CFR PART ~~1023.3~~ 367 as of January 1, ~~1994~~ 1999;
- 17      (13)  "Semitrailer," any vehicle of the trailer type, equipped with a kingpin assembly,  
18      designed and used in conjunction with a fifth wheel connecting device on a motor  
19      vehicle and constructed so that some part of its weight and that of its load rests upon  
20      or is carried by another vehicle;
- 21      (14)  "Trailer," every vehicle without motive power designed to carry property or persons  
22      wholly on its own structure and to be drawn by a motor vehicle;
- 23      (15)  "Board," the Surface Transportation Board as defined in 49 USC § 13102(1) as of  
24      January 1, 1999;
- 25      (16)  "Secretary," the secretary of the United States Department of Transportation as that

1 term is defined in 49 USC § 13102(17) as of January 1, 1999.

2 Section 2. That § 49-28-33 be amended to read as follows:

3 49-28-33. The commission may pursuant to chapter 1-26 adopt rules to establish uniform  
4 procedures for the administration of the provisions of this chapter. Rules may be adopted by the  
5 commission governing motor carriers in the following areas:

6 (1) Filing information and reports; and

7 (2) Registration and identification when performing interstate operations within the state.

8 The director of the division of highway patrol may promulgate reasonable rules pursuant to  
9 chapter 1-26 to promote safety of operations, standards, and safety of equipment. The rules shall  
10 conform as nearly as possible with the rules and regulations for safety of operations and  
11 equipment adopted by the U.S. Department of Transportation, pursuant to ~~40~~ 49 U.S.C.  
12 ~~§ 1655(e)~~ Chapter 311 as amended through January 1, ~~1995~~ 1999.

13 Section 3. That § 49-28-36 be amended to read as follows:

14 49-28-36. No ~~ICC~~ exempt motor carrier may perform interstate operations, to, from, within,  
15 or traversing this state unless it files an application for the registration of such operation with the  
16 commission and the commission approves the application by the issuance of a registration permit.

17 In lieu of a registration permit, all ICC regulated motor carriers shall comply with 49 U.S.C.  
18 ~~§ 11506~~ 13901 and 49 CFR PART ~~4023~~ 365 as of January 1, ~~1994~~ 1999, before performing any  
19 interstate operations to, from, within, or traversing this state.

20 Section 4. That § 49-28-36.1 be amended to read as follows:

21 49-28-36.1. The fee to accompany the filing of an application for registration as an ~~ICC~~  
22 exempt motor carrier is twenty-five dollars. However, no registration fee is required if the  
23 applicant has previously paid a registration fee for other interstate operations and is registered  
24 with the commission at the time the application is received by the commission.

25 Section 5. That § 49-28-36.4 be amended to read as follows:

1        49-28-36.4. Any nonresident ~~ICC~~ exempt motor carrier shall, before a registration permit is  
2        issued under this chapter, designate and maintain in this state an agent upon whom may be served  
3        all summonses or other lawful processes in any action or proceeding against such motor carrier  
4        arising from its carrier operations. Service of process upon or acceptance or acknowledgment  
5        of such service by the agent has the same legal force and validity as if duly served upon the  
6        nonresident carrier personally. The designation of agent shall be in writing, shall give the name  
7        and address of the agent, and shall be filed in the office of the commission. Any nonresident ~~ICC~~  
8        regulated motor carrier shall file with its registration state the name of an agent to receive service  
9        of process from South Dakota pursuant to ~~49 CFR PART 1023.4(3) as of January 1, 1994~~ 49  
10       USC § 13303(b) and 49 USC § 13304 as of January 1, 1999. Upon failure of any nonresident  
11       motor carrier to file a designation of agent as provided by this section, the nonresident motor  
12       carrier shall be conclusively considered to have designated the secretary of state as such agent.  
13       Service of process upon or acceptance or acknowledgment of such service by the secretary of  
14       state has the same legal force and validity as if duly served upon such nonresident carrier  
15       personally if notice of such service and a copy of the process are immediately sent by registered  
16       mail by the secretary of state, to the nonresident carrier, if the carrier's address be known.  
17       Service of such process upon the secretary of state shall be made by delivering to the secretary  
18       of state's office two copies of the process with a fee of three dollars to cover the costs of  
19       handling and mailing the process.

20       Section 6. That § 49-28-36.5 be amended to read as follows:

21       49-28-36.5. Registration permits issued by the commission to ~~ICC~~ exempt motor carriers  
22       shall continue in effect without payment of annual renewal fees if each ~~ICC~~ exempt motor carrier  
23       pays an annual identification fee of five dollars for each motor vehicle operated in interstate  
24       movement within the borders of this state with not less than one annual identification fee to be  
25       paid annually before the first day of December of each year. However, in no instance may any

1 ~~ICC~~ exempt motor carrier be required to purchase or display more than one identification stamp  
2 for any one motor vehicle. Failure of an ~~ICC~~ exempt motor carrier to pay a minimum of one  
3 identification fee or an ~~ICC~~ regulated motor carrier to register with a registration state by the  
4 first day of December of any year, shall result in the cancellation of registration and no further  
5 interstate movement may be permitted until the motor carrier has re-registered in accordance  
6 with the rules of the commission.

7 Section 7. That § 49-28-36.6 be amended to read as follows:

8 49-28-36.6. An interstate motor carrier who infrequently makes use of the state highways  
9 ~~with a nonscheduled chartered bus may, upon proof of satisfactory financial responsibility, elect~~  
10 to pay for a single trip permit ~~for the bus~~ in lieu of registering ~~the bus~~ pursuant to § 49-28-36.  
11 The fee for the single trip permit is forty dollars.

12 Section 8. That § 49-28-36.7 be amended to read as follows:

13 49-28-36.7. A motor carrier shall make an application for a single trip permit as provided by  
14 § 49-28-36.6 and the permit secured at a port of entry or by such other means designated by the  
15 ~~public utilities~~ commission prior to ~~the bus~~ beginning movement over the state's highways. The  
16 application shall include the applicant's name and business address, a description of the vehicle,  
17 and the route of travel suggested for the trip.

18 Section 9. That § 49-28-41 be amended to read as follows:

19 49-28-41. The ~~public utilities~~ commission shall cooperate with the ~~interstate commerce~~  
20 ~~commission, to the extent authorized by the federal Motor Carrier Act FHWA, in the~~  
21 administration of ~~that federal act~~ motor carrier laws, and the commission may appear before the  
22 ~~interstate commerce commission FHWA, the secretary, or the board~~ as a party litigant in all  
23 proceedings involving the regulation and control of motor carriers in interstate commerce if, in  
24 its opinion, the public interest of the state justifies such participation.

25 Section 10. That § 49-28-41.1 be amended to read as follows:

1        49-28-41.1. If the ~~public utilities~~ commission determines upon its own motion or upon the  
2        petition of a resident of this state that it is in the best interests of the state, it may appear before  
3        the ~~interstate commerce commission~~ FHWA, the secretary, or the board as a party in all  
4        proceedings involving the regulation and control of motor carriers in interstate commerce. ~~When~~  
5        If any matter is pending before the ~~interstate commerce commission~~ FHWA, the secretary, or  
6        the board between a resident of this state as petitioner and a motor carrier doing business in this  
7        state and engaged in interstate transportation of freights, charging such carrier with any violation  
8        of the Interstate Commerce Act, upon application of the petitioner, the ~~public utilities~~  
9        commission may appear therein and be substituted as a party in place of such petitioners and  
10       thereafter the matter shall be prosecuted by the ~~public utilities~~ commission at the expense of the  
11       state in the same manner as though originally begun by it.

1    **BILL HISTORY**

2    1/12/99 First read in House and referred to Transportation. H.J. 38

3    1/14/99 Scheduled for Committee hearing on this date.

4    1/16/99 Scheduled for Committee hearing on this date.

5    1/16/99 Transportation Do Pass Amended, Passed, AYES 12, NAYS 0. H.J. 78

6    1/16/99 Transportation Place on Consent Calendar.

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0213

## HOUSE COMMERCE COMMITTEE ENGROSSED NO. **HB1047** - 1/20/99

Introduced by: The Committee on Commerce at the request of the Department of Commerce  
and Regulation

1 FOR AN ACT ENTITLED, An Act to grant state-chartered banks powers allowed federally  
2 chartered banks under certain conditions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 51A-2 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Notwithstanding any restrictions, limitations, and requirements of law, in addition to all  
7 powers, expressed or implied, that a state bank has under the laws of this state, a state bank shall  
8 have the powers and authorities conferred as of January 1, 1999, upon federally chartered banks  
9 doing business in this state. A state bank may exercise the powers and authorities conferred on  
10 a federally chartered bank after this date only if the director finds that the exercise of such  
11 powers and authorities:

12 (1) Serves the convenience and advantage of depositors, borrowers, or the general public;  
13 and

14 (2) Maintains the fairness of competition and parity between state chartered and federally  
15 chartered banks.

16 If the director finds that the before-mentioned conditions have been met, the director shall



1 make a declaratory ruling allowing state banks the same powers and authorities.

2 As used in this section, powers and authorities, include, without limitation, powers and  
3 authorities in corporate governance and operational matters.

4 Section 2. That chapter 51A-2 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The restrictions, limitations, and requirements applicable to specific powers or authorities of  
7 federally chartered banks apply to state banks exercising those powers or authorities permitted  
8 under section 1 of this Act but only insofar as the restrictions, limitations, and requirements relate  
9 to exercising the powers or authorities granted banks solely under section 1 of this Act.

10 Section 3. That § 51A-2-14 be amended to read as follows:

11 51A-2-14. The commission may adopt rules under its jurisdiction:

12 (1) To authorize banks to participate in any public agency hereafter created under the  
13 laws of this state or the United States, the purpose of which is to afford advantages  
14 or safeguards to banks or to depositors, and to comply with all requirements and  
15 conditions imposed upon such participants;

16 (2) ~~To allow state banks to engage in any banking activity, not prohibited by state law,~~  
17 ~~in which national banks are, as the date of the adoption of the rule, authorized to~~  
18 ~~engage;~~

19 (3) To allow banks to engage in any other banking or nonbanking activities, not  
20 prohibited by state law, which the commission deems appropriate; and

21 (4) To authorize banks to use new or different forms of accepting deposits, making loans,  
22 transferring funds, offering services and such other subjects as it deems appropriate.

23 In adopting rules pursuant to this section, the commission shall adopt only such rules that,  
24 in the opinion of the commission, promote competitive equality between state chartered banks,  
25 national banks and other financial institutions.

1    **BILL HISTORY**

2    1/12/99 First read in House and referred to Commerce. H.J. 40

3    1/19/99 Scheduled for Committee hearing on this date.

4    1/19/99 Commerce Do Pass Amended, Passed, AYES 12, NAYS 0. H.J. 81

5    2/19/99 Scheduled for Committee hearing on this date.

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0254

## HOUSE COMMERCE COMMITTEE ENGROSSED NO. **HB1049** - 1/20/99

Introduced by: The Committee on Commerce at the request of the Department of Commerce  
and Regulation

1 FOR AN ACT ENTITLED, An Act to require certain specifications and tolerances for weights  
2 and measures established by administrative rule to be in conformance with updated national  
3 standards.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 37-21-6 be amended to read as follows:

6 37-21-6. Regulations pursuant to § 37-21-5 may include specifications and tolerances for any  
7 weight, measure or weighing or measuring device of the character of those specified in  
8 § 37-21-9. The rules shall prohibit the use of any weight, measure or weighing or measuring  
9 device which is not accurate, which is of such construction that it is not reasonably permanent  
10 in its adjustment, which will not repeat its indications correctly or which facilitates the  
11 perpetration of fraud. Such specifications and tolerances shall be in conformity with the code of  
12 specifications, tolerances and regulations for commercial weighing and measuring devices issued  
13 and recommended by the National Institute of Standards and Technology of the United States  
14 Department of Commerce and in effect on ~~July~~ January 1, ~~1992~~ 1999.

1    **BILL HISTORY**

2    1/12/99 First read in House and referred to Commerce. H.J. 41

3    1/19/99 Scheduled for Committee hearing on this date.

4    1/19/99 Commerce Do Pass, Passed, AYES 12, NAYS 0.

5    1/19/99 Commerce Place on Consent Calendar.

6    1/19/99 Commerce Reconsidered, AYES 12, NAYS 0.

7    1/19/99 Commerce Do Pass Amended, Passed, AYES 12, NAYS 0. H.J. 81

8    1/19/99 Commerce Place on Consent Calendar.

9    1/19/99 Commerce Do Pass, Passed, AYES 12, NAYS 0.

10   2/19/99 Scheduled for Committee hearing on this date.

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0407

HOUSE TRANSPORTATION COMMITTEE

ENGROSSED NO. **HB1052** - 1/20/99

Introduced by: The Committee on Transportation at the request of the Department of  
Transportation

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding accident record fees.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 32-34-13 be amended to read as follows:

4 32-34-13. Reports pursuant to §§ 32-34-7 to 32-34-12, inclusive, and the information  
5 contained in such reports is not privileged and may not be held confidential. The secretary of  
6 transportation shall collect four dollars for each ~~copy of a report furnished to any person by his~~  
7 ~~office~~ request to locate a report on file. The secretary shall furnish to any person requesting a  
8 search, at no additional cost, any report located by the search. All sums collected ~~for copies of~~  
9 ~~such reports~~ shall be deposited in the state highway fund.

1    **BILL HISTORY**

2    1/12/99 First read in House and referred to Transportation. H.J. 41

3    1/14/99 Scheduled for Committee hearing on this date.

4    1/16/99 Scheduled for Committee hearing on this date.

5    1/16/99 Transportation Do Pass Amended, Passed, AYES 7, NAYS 5. H.J. 78